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A Crackerjack of a Sea Yarn: The Triumphs, Tributes and Trials of Treasure Hunter Tommy Thompson

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A Crackerjack of a Sea Yarn: The Triumphs,
Tributes and Trials of Treasure Hunter
Tommy Thompson

TAYLOR SIMPSON-WOOD*

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***"Gold is excellent; gold is treasure, and he that possesses it does all that he wishes to in this world, and succeeds in helping souls into paradise."*¹ – Christopher Columbus**
***"Quid non mortalia pectora cogis, Auri sacra fames!"*² – Virgil, *Aeneid*, Bk. III 56**

I. INTRODUCTION

Ever since man first sailed the deep blue sea, the art of spinning a good sea yarn has become an intrinsic part of the life of a mariner.³ In his book *Looking for a Ship*, author John McPhee recognizes this phenomenon of nature when writing, "[a]ll through a voyage while nothing happens, sailors tell stories about things that happen."⁴ A new yarn can now be added to the sailors' lexicon. However, this story is no fish tale. Rather, "[it is] such the stuff [a]s [films and documentaries] are made on."⁵

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1. CARL LOTUS BECKER, BEGINNINGS OF THE AMERICAN PEOPLE 12 (2007).
2. "To what, accursed lust for gold, do you not drive the hearts of men?" Virgil, *Aeneid*, Bk. III 56, translated in ALLEN MANDELBAUM, THE AENEID OF VIRGIL 59 (1971).
3. Dean Caine, *101 Crackerjack Sea Books*, BOOKMARKS MAG. (Aug. 29, 2007, 8:27 PM), <http://www.bookmarksmagazine.com/101-crackerjack-sea-books/dean-king>.
4. JOHN MCPHEE, LOOKING FOR A SHIP 81 (1990).
5. WILLIAM SHAKESPEARE, THE TEMPEST act 4, sc. 1, 148–158.

Prospero:

Our revels now are ended. These our actors, As I foretold you, were all spirits, and
 Are melted into air, into thin air;
 And like the baseless fabric of this vision,
 The cloud-capp'd tow'rs, the gorgeous palaces,
 The solemn temples, the great globe itself,
 Yea, all which it inherit, shall dissolve,
 And, like this insubstantial pageant faded,
 Leave not a rack behind. We are such stuff
 As dreams are made on; and our little life
 Is rounded with a sleep. Id.

This article will recount a story of treasure, longing, discovery, and legal battles. It will also examine the difference between the law of salvage and that of finds and touches upon the role the law should play in easing the tension between archeological preservation and the plundering of historic wrecks and artifacts. It will explore the ground-breaking case from which emanated the proposition of constructive *in rem* jurisdiction. Most importantly, it will tell the tale of the triumphs, tributes, and the ultimate woe befalling the protagonist of the story, a tragically flawed hero named Tommy Thompson. In this tale, Thompson will live a life of intrigue as a treasure hunter and salvor of the SS CENTRAL AMERICA, dubbed “the ship of gold.”⁶ He will envision, seek, and ultimately possess gold glittering at the bottom of the sea. However, he will find no lasting joy in his accomplishments. Rather, he will learn that possessing such treasure comes only at a high price. According to some, after salvaging three tons of gold, silver, and artifacts from the famous 1857 wreck, Thompson cheated his investors and went “on the lam.”⁷ For over two years, Thompson and his administrative assistant and girlfriend, Alison Antekeier, eluded authorities and avoid a civil suit for the more than \$12.7 million owed to investors.⁸ Despite this disappearance, however, some investors maintain that Thompson “never bilked anyone.”⁹ Take for example Gil Kirk, an investor in the hunt for sunken treasure to the tune of \$1.8 million and a former

6. See generally GARY KINDER, *SHIP OF GOLD IN THE DEEP BLUE SEA: THE HISTORY AND DISCOVERY OF THE WORLD'S RICHEST SHIPWRECK* (1998).

7. Paula Mejia, *Shipwreck Treasure Hunter Accused of Cheating Investors Is Captured*, NEWSWEEK (Feb. 4, 2015, 5:49 PM), <http://www.newsweek.com/shipwreck-treasure-hunter-accused-cheating-investors-captured-304490>; Megan Gannon, *Fugitive Shipwreck Hunter Captured After 2 Years on the Lam*, LIVESCIENCE (Jan. 30, 2015, 5:06 PM ET), <http://www.livescience.com/49651-fugitive-shipwreck-hunter-captured.html>; Kathy Lynn Gray, *Mystery of Tommy Thompson's time on lam endures*, COLUMBUS DISPATCH (Feb 1, 2015, 12:01 AM), <http://webcache.googleusercontent.com/search?q=cache:i5dJGB0PxucJ:www.dispatch.com/content/stories/local/2015/02/01/mystery-of-thompsons-time-on-lam-endures.html&num=1&hl=en&gl=us&strip=1&vwsr=0>.

8. Julia Glum, *Who is Tommy Thompson? Fugitive Treasure Hunter Who Found S.S. Central America Shipwreck to Appear in Court for Cheating Investors*, INT'L BUS. TIMES (Jan. 29, 2015, 8:52 AM), <http://www.ibtimes.com/who-tommy-thompson-fugitive-treasure-hunter-who-found-ss-central-america-shipwreck-1799002>.

9. Associated Press, *Mystery Surrounds Missing Discoverer of Gold-laden Shipwreck*, GUARDIAN (Sept. 13, 2014, 1:57 PM EDT), <https://www.theguardian.com/world/2014/sep/13/mystery-missing-discoverer-gold-shipwreck-tommy-thompson-ss-central-america>.

director of one of Thompson's companies.¹⁰ Despite never having seen a dime, in Kirk's view, Thompson is "an American hero, like the Wright brothers."¹¹

While this narrative will not have a happily ever after ending, it is a tale worth recounting. Tommy Thompson's quest for the ship of gold is a tale of amazing luck and shattered dreams, scientific brilliance and insatiable greed, glorious triumph and deep despair. It is also the saga of the rise and fall of a most unlikely hero. Once told, it will linger in the minds of both the teller and the listener. And, "when it ends, as all stories do, will leave a legacy, for better or for worse."¹²

II. THE PROLOGUE: THE TRAGIC SINKING OF THE SS CENTRAL AMERICA

In order to fully appreciate the changes of fortune experienced by Tommy Thompson, it is necessary to understand the "she" who was, and probably still is, his all-consuming passion. She is the SS CENTRAL AMERICA. Since Thompson's discovery of the "ship of gold" in 1988, the ill-fated journey has been written about many times in various periodicals and newspapers and by a number of courts. Initial estimates valued her cargo at \$1 billion in recoverable gold.¹³ Not surprisingly, this engendered multiple lawsuits brought by "self-styled 'finders' from Ohio, British and American insurance underwriters, an heir to the Miller Brewing fortune, a Texas oil millionaire, an Ivy League university, and an Order of Catholic monks."¹⁴ Later, Thompson's alleged failure to share revenues of approximately \$43 million began another "salvo of litigation" when actions were brought by investors and even Thompson's own crew.¹⁵ However, no concise retelling of the saga of the SS CENTRAL AMERICA can match the

10. *Id.*

11. *Id.*

12. Michelle Sullivan, *Man Overboard: Tommy Thompson, a Ship of Gold and the Columbus Investors Still Looking for Treasure*, COLUMBUS MONTHLY 52 (Nov. 2014), http://www.michelleryansullivan.com/s/Man_Overboard.pdf.

13. See *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 974 F.2d 450, 458, 1992 AMC 2705 (4th Cir. 1992).

14. *Id.* at 455.

15. *Williamson v. Recovery Ltd. P'ship*, 731 F.3d 608, 616, 2014 AMC 330 (6th Cir. 2013).

incomparable narrative spun by the late Judge Donald Russell of the Fourth Circuit Court of Appeals:¹⁶

The year 1857 is justly famous in American history for its many notable events. Among these was the beginning of a fairly serious financial decline, the aptly named Panic of 1857. Associated with the Panic, and another reason why the year is so famous, is one of the worst disasters in American maritime history, the sinking of the S.S. CENTRAL AMERICA.

The CENTRAL AMERICA was a black-hulled, coal-fired, three-decked, three-masted sidewheeler with a cruising speed of eleven knots. Built in 1852, and launched the following year, she carried passengers, mail, and cargo between Aspinwall, Colombia (on the Caribbean side of the isthmus of Panama), and New York City, with a stopover in Havana. Most, if not all, of her passengers were headed to or from California, the route being one leg of the then quickest way between the west coast and the eastern seaboard—from California to the Pacific side of the isthmus of Panama aboard a steamship, across the isthmus on the Panama Railroad, and then from Aspinwall to New York aboard another steamship. Owned by the U.S. Mail and Steamship Company . . . the CENTRAL AMERICA completed forty-three voyages between Panama and New York in her four years of operation. During this period, the California gold rush was in full swing, and it has been said that the ship carried one-third of all gold shipped at that time from California to New York.

In August of 1857, over four hundred passengers and approximately \$1,600,000 (1857 value) in gold (exclusive of passenger gold) left San Francisco for Panama aboard the S.S. SONORA. Many of the passengers were prospectors who had become rich and were returning home, either for good or to visit. Also on board were California Judge Alonzo Castle Monson, who

16. *Id.* at 612–14 (“The tale of the last days of the S.S. CENTRAL AMERICA has been retold many times by many courts throughout the many years of litigation in this case. None, however, match the excellence of the narrative given by the late Judge Donald Russell of the Fourth Circuit.”). For a wonderful, detailed accounting of the historical background and events surrounding the sinking of the “Ship of Gold” see Kinder, *supra* note 6, at 73–75, 123–36.

resigned from the bench after losing his house and all his money in a famous poker game, and Mrs. Virginia Birch, a.k.a. "the notorious Jenny French," a former dance hall girl well known in San Francisco. As for the gold, it was being shipped by California merchants, bankers, and express companies, including Levi Straus and Wells Fargo, to New York banks, the banks wanting specie to stave off the effects of the financial downturn.

The travelers and the cargo reached Panama without incident, and they crossed the isthmus by rail. On September 3, over six hundred people came aboard the CENTRAL AMERICA, as well as \$1,219,189 of the gold shipped on the SONORA, the remainder being shipped to England aboard a different vessel. The CENTRAL AMERICA first headed for Havana, which was reached on September 7. There, the ship lay over for a night, and some of the passengers debarked to catch another vessel for New Orleans. On September 8, under clear skies, the CENTRAL AMERICA left Havana for New York, carrying approximately 580 persons and her golden treasure.

On the second day out of Havana, the weather changed and a mighty storm came up. What the passengers and crew could not know was that they were headed directly into the teeth of a ferocious hurricane. As the storm worsened around the CENTRAL AMERICA, a leak developed and soon water was rushing into the boat. The water extinguished the fires in the ship's boilers, and this in turn caused the ship's pumping system to fail. All able male passengers began a systematic bailing of water out of the ship, but it was to no avail; after thirty frantic hours, the boiler fires would still not light and the water level continued to rise.

Knowing the situation was hopeless, Captain William Lewis Herndon managed to hail a passing ship, the brig MARINE, and one hundred persons, including all but one of the women and children aboard, were safely transferred to the other ship. Time and conditions would not allow for any more transfers, however, and shortly after 8 p.m. on September 12, the CENTRAL AMERICA began making its quick descent to the bottom of the ocean.

After being flung into the sea, many of the men managed to come to the top and float there, desperately holding onto any buoyant material available. Six to nine hours after the sinking, fifty of these men were rescued by the Norwegian bark ELLEN. Earlier, a small bird had thrice circled the ELLEN and flown directly into the face of the ship's captain. Taking this as a sign, the captain changed his course to follow from whence the bird had come, and in so doing discovered the fifty floating survivors. Three other men were also rescued when, nine days later and 450 miles away, a ship spotted their lifeboat, which had been riding the Gulf Stream.

In all, 153 persons were rescued, while approximately 425 lost their lives. Also lost were hundreds of bags of mail and the \$1,219,189 in gold. At the time, there were rumors that other commercial shipments of gold were aboard, but these were quickly discounted. It is true, though, that a significant amount, probably several hundred thousand dollars' worth (1857 valuation), of passenger gold was lost. Many passengers had with them their earnings from several years' labor in the California gold fields. Some kept this gold on their person, while others carried it in carpetbags or trunks. Also, passenger gold could have been checked with the ship's purser, although these records were lost with the ship. Captain Thomas W. Badger is one example of a passenger carrying gold, he having lost \$17,500 of it stored in a carpetbag. Also, the newspapers reporting the disaster contained vivid accounts of men flinging down their hard-earned treasure in disgust upon realizing their impending doom.

Needless to say, for the next several weeks, newspapers around the country devoted much space to the disaster which befell the CENTRAL AMERICA. While people mourned the over four hundred persons who had valiantly lost their lives, they also feared that the loss of such a large amount of specie would exacerbate the country's already serious financial situation. The commercial shipments of gold had been insured, though, and the insurance underwriters began advertising in the newspapers that they would pay off their commitments upon the proper proofs being presented. Approximately one-third of the treasure had been underwritten by New York insurers while the rest was underwritten in London.

Without doubt, most, if not all, of the claims were promptly paid off by the underwriters.

Under applicable law, then and now, once the underwriters paid the claims made upon them by the owners of the gold, the treasure became theirs. Thus, less than two weeks after the disaster, the underwriters began negotiating with the Boston Submarine Armor Company about possibly raising the ship and her cargo. Also, on June 28, 1858, two of the underwriters (Atlantic Mutual Insurance Company and Sun Mutual Insurance Company) contracted with Brutus de Villeroi, a Frenchman then living in Pennsylvania, to salvage the gold. The contract states that de Villeroi, "by means of his Invention of a Submarine boat" and at his own expense, would raise the treasure and receive a salvage award of seventy-five percent. At this time, though, no one was quite sure where the boat had gone down, or in how deep of water. At first, some estimated the ship was in only twenty-eight fathoms of water (168 feet), when in fact it was over 8,000 feet below the surface. As would be expected, nothing came of the salvage attempts in the late 1850s, and the issue, and the gold, would lie dormant for over a hundred and twenty years.¹⁷

It would take an intrepid explorer with the spirit of a true pioneer to wake the sleeping vessel. It would take a man with the Midas touch, a man known as Tommy Thompson.

III. THE TRIUMPHS, TRIBUTES AND TRIALS OF TOMMY THOMPSON

A. *The Early Years*

The son of an engineer and a nutritionist, Tommy Thompson was born in 1952 and spent the first twelve years of his life in "a small town surrounded by a countryside of white farmhouses."¹⁸ The youngest of four children, Tommy was raised in a household that was "an eclectic mix of conservative and liberal views."¹⁹ From early on, it was clear that Thompson possessed "an intelligence that was as remarkable as his sometimes

17. *Columbus-Am. Discovery Grp.*, 974 F.2d at 455–57.

18. Kinder, *supra* note 6, at 81.

19. *Id.*

maddening refusal to do anything the normal way.”²⁰ Even as a child, he was “always building something or fixing something or tearing something down to build over again.”²¹ When Thompson was no more than eight years old, he figured out how to split a wire, connected it to a jewelry box and built himself a telephone.²² When he was thirteen, the family moved to Defiance, Ohio, which is located at the confluence of the Maumee and Auglaize rivers.²³ During the 1960’s, Defiance was a town where one would find “soybeans, wheat fields and about 17,000 people, mostly white.”²⁴ It was at this time that he acquired the nickname “Harvey the Hobo,”²⁵ which he preferred to be known as later in life. It is this inquisitive, brilliant, if already a bit eccentric, young boy who, as a man, would fall in love with the ocean and all her deep secrets hidden in her abyss.²⁶

B. From College Student to Conquering Hero

Although he wouldn’t actually begin recruiting investors until 1985, Thompson’s quest to be an inventor and an ocean engineer began in the 1970 when he enrolled at Ohio State University.²⁷ Ultimately, he graduated with his degree after completing a special five-year program, which he designed with help of his advisor who, fortuitously, was a marine engineer.²⁸ Tommy majored in mechanical engineering with a specialty in machine design and an ocean engineering option which included taking courses which would “expose him to concepts he would need to work in the ocean” including, aquatic microbiology, corrosion sciences, and marine geology.²⁹ The shape his dream would ultimately take began to solidify when he spent the following year in Key West, working and diving with Mel Fischer as he

20. Associated Press, *Feds Chase Treasure Hunter Turned Fugitive*, USA TODAY (Sept. 13, 2014, 10:39 AM ET) <https://www.usatoday.com/story/news/nation/2014/09/13/feds-chase-treasure-hunter-turned-fugitive/15578721/>.

21. Kinder, *supra* note 6, at 81.

22. *Id.* at 83.

23. *Id.* at 79.

24. Sullivan, *supra* note 12, at 53.

25. Kinder, *supra* note 6, at 84.

26. Sullivan, *supra* note 12, at 53.

27. Kinder, *supra* note 6, at 87.

28. *Id.* at 91 (“Although Ohio State was landlocked and offered no courses in marine engineering, Tommy had intrigued his advisor, the dean of the School of Mechanical Engineering, Don Glower.”).

29. *Id.*

searched for additional treasure of the once elusive Spanish galleon, the ATOCHA.³⁰ His ideas further crystallized after joining treasure hunter John Doering's latest venture, the search for LA CONCEPCION.³¹ The vessel had gone down in 1641 off the coast of the Dominican Republic, reportedly carrying 150 tons of silver.³²

While watching Fischer and Doering's searches for shipwrecks in shallow reef waters, Thompson wondered at the lack of methodology employed by the hunters.³³ The logical progression for a mind like Thompson's was to then ponder about what technology would be needed "to recover shipwrecks from the deep ocean" floor.³⁴ Thompson reasoned that "if he had the capability to descend thousands of feet, sift delicately through the remains of an ancient ship, and bring back her treasure unmarred, he had the means to do almost anything on the bottom: fish, farm, mine, drill, recover, test, save, explore, collect. . . ."³⁵

The final piece of the intellectual puzzle fell into place in 1981, when Thompson went to work for Battelle Memorial Institute located in Columbus, Ohio, and was assigned to work on the concept of mining the deep ocean.³⁶ Recognizing that "radically new technologies" would be required for successful deep-ocean mineral recovery, Thompson concluded that while such technologies could be developed, the cost of such development in comparison to the value of the minerals to be harvested made the project economically unsound.³⁷ "[T]he value of the minerals would have to increase significantly to make it pay."³⁸

Thompson's work in the area of deep-ocean mining "had given him additional ideas on how to recover a deep-water shipwreck."³⁹ The key to

30. Sullivan, *supra* note 12, at 53. In the spring of 1971, treasure hunter Mel Fisher and his company, Treasure Salvors, discovered the lost wreck of the NUESTRA SENORA DE ATOCHA ("ATOCHA"), a three-hundred-year-old Spanish galleon that sank in stormy weather in 1622. *Fla. Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 673-74 (1982). The ATOCHA carried a cargo of gold and emeralds from the Americas en route to King Phillip IV of Spain. *Id.* at 673.

31. Kinder, *supra* note 6, at 114.

32. *Id.*

33. *Id.* at 121.

34. *Id.*

35. *Id.*

36. Kinder, *supra* note 6, at 143.

37. Kinder, *supra* note 6, at 143.

38. *Id.*

39. *Id.*

success for deep-ocean mining was developing new technology. However, unlike the limited value of the minerals to be recovered, the value of a single vessel and her treasure might warrant the costs of developing such technology.⁴⁰ “[A] single ship with a large payload might be enough to persuade investors to give him the money he would need to create the technology that could penetrate the deep-ocean barrier.”⁴¹

Flashback to 1978. The place is Columbus, Ohio. Picture a winter storm raging around a house. As the snow slacks off, you see it is a Victorian that has been divided into two apartments. Suddenly you hear a loud knocking. It is Thompson trying to break the door set in the wall separating one apartment from another.⁴² Thompson’s girlfriend (now his ex-wife) lived on one side of the house and her heat had gone out. On the other side of the door upon which he was knocking, lived another young man, Bob Evans who would play a major role in assisting Thompson in making what Life Magazine would described in 1992, as “the greatest treasure ever found.”⁴³ Evans, a geologist and dedicated amateur historian, became Thompson’s sounding board for his plan in salvaging a deep-water wreck.⁴⁴ They would talk for hours and—as another friend noted—when the two got together, they had “become like one person in a funny way, their minds kind of meld and they know what the other is thinking and they get excited. They were always excited.”⁴⁵ In 1983, the two formed the Columbus-America Discovery Group.⁴⁶

One of the key challenges facing Thompson was designing a reliable, remote-control vehicle that could work at deep ocean depths a mile below the ocean’s surface and perform the tasks necessary for a successful salvage operation of an historic wreck.⁴⁷ First, however, Thompson and Evans needed to identify their ship. After considering the TITANIC, the REPUBLIC, the ANDREA DORIA, and the SAN JOSE, they ultimately decided on the SS CENTRAL AMERICA.⁴⁸ She was chosen only after

40. *Id.*

41. *Id.*

42. Sullivan, *supra* note 12, at 52.

43. Gannon, *supra* note 7.

44. Sullivan, *supra* note 12, at 54.

45. Kinder, *supra* note 6, at 141.

46. Sullivan, *supra* note 12, at 54.

47. Kinder, *supra* note 6, at 147–151.

48. *Id.* at 152–153.

Thompson had researched whether there was historical record establishing that the vessel had gone down while her hold was full of valuable cargo, that the place of her sinking could approximately be located, and that the environment of that location was conducive to being recovered to produce a successful salvage operation.⁴⁹ A primary consideration was the condition of the ocean floor at the site. If the sediment at the location was too deep, the vessel would be “buried and the sediment would fill in the site” faster than the ship could dig it out; if the currents ran swiftly at the location, the site could not be properly studied for later placement of a Remotely Operated Underwater Vehicle (“ROV”) outfitted with cameras.⁵⁰ The history and environmental conditions surrounding the sinking of the SS CENTRAL AMERICA were nearly perfect.⁵¹ This perfection did not go unnoticed by other treasure hunters. According to Rick Robol, maritime attorney for Thompson and the Columbus-America Discovery Group, there were at least two other groups who were currently “mounting efforts to find and salvage the CENTRAL AMERICA.”⁵² Clearly, the race was on and “[u]nless Thompson could establish a legal claim, 1,400 square miles of the Atlantic Ocean were about to become the setting for a gold-grabbing free-for-all.”⁵³ Working under the fear and pressure that another group might locate the SS CENTRAL AMERICA before them, the next step for the Columbus-America Discovery Group was to locate the vessel as expeditiously as possible and, even more importantly from a legal standpoint, to recover at least one artifact from the SS CENTRAL AMERICA to bring before a federal district court to invoke admiralty *in rem* jurisdiction.

C. *Relevant Law from the Perspective of Tommy Thompson*

The two legal schemes relevant to the locating of the SS CENTRAL AMERICA by Thompson and his crew are the law of salvage and the law of finds.⁵⁴ “The differences between these two doctrines is highly material”

49. *Id.*

50. *Id.* at 153.

51. *See* Kinder, *supra* note 6, at 153–160.

52. Herb Cook Jr., *Treasure Hunt on the High Seas: the Grand Obsession of Tommy Thompson*, COLUMBUS MONTHLY, <http://www.columbusmonthly.com/content/stories/2014/11/Treasure-Hunt-on-the-High-Seas-Tommy-Thompson-1989.html> (last updated Oct. 29, 2014, 3:20 PM).

53. *Id.*

54. *Hener v. United States*, 525 F. Supp. 350, 353 (S.D.N.Y. 1981).

especially when dealing with the discovery of historic ships with cargo worth millions of dollars.⁵⁵

1. *The Law of Finds*

The overarching goal of the law of finds is possession. Its underlying premise is the idea of “finders, keepers.”⁵⁶ The key to being awarded possession of a historic shipwreck is abandonment, meaning that no claim to the property can be staked by an owner or successors-in-interest.⁵⁷ In cases of shipwrecks, where the vessel was clearly owned at one point, the title to the shipwreck and its artifacts will be awarded to whoever locates the shipwreck only where the finder can prove by clear and convincing evidence that the original owner has abandoned the vessel.⁵⁸ The finder must also have the “intent to acquire the property and take actual possession or control of it.”⁵⁹ Due to its emphasis on title and individual ownership, the common law doctrine of finds encourages “[w]ould-be finders . . . to act secretly, and to hide their recoveries, in order to avoid claims of prior owners or other would-be finders that could entirely deprive them of the property.”⁶⁰ Consequently, “the law of finds is disfavored in admiralty”⁶¹ and the

55. *Id.* at 355.

56. *Martha's Vineyard Scuba Headquarters, Inc. v. The Unidentified, Wrecked and Abandoned Steam Vessel*, 833 F.2d 1059, 1065, 1988 AMC 1109 (1st. Cir. 1987) (discussing how the common law doctrine of finds expresses “the ancient and honorable principles of ‘finders, keepers’”).

57. *Columbus-America Discovery Group v. Atlantic Mut. Ins. Co.*, 974 F.2d 450, 464, 1992 AMC 2705 (4th Cir. 1992) (reiterating that in terms of sunken property, the law of finds only applies where the property has been abandoned); Allison Leigh Richmond, *Scrutinizing the Shipwreck Salvage Standard: Should A Salvor Be Rewarded for Locating Historic Treasure?*, 23 N.Y. INT'L L. REV. 109, 149–50 (2010); Rob Regan, *When Lost Liners Become Found: An Examination of the Effectiveness of Present Maritime Legal and Statutory Regimes for Protecting Historic Wrecks in International Waters with Some Proposals for Change*, 29 TUL. MAR. L. J. 313, 325 (2005) (emphasizing that for the law of finds to apply, there can be no successor-in-interest to the abandoned property).

58. Brooke Wright, *Keepers, Weepers, or No finders at All: The Effect of International Trends on the Exercise of U.S. Jurisdiction and Substantive Law in the Salvage of Historic Wrecks*, 33 TUL. MAR. L. J. 285, 299–303 (2008).

59. *Hener*, 525 F. Supp. at 356 (“To justify an award of title . . . the law of finds requires a finder to demonstrate not only the intent to acquire the property involved, but also possession of that property, that is a high degree of control over it.”).

60. *Columbus-Am. Discovery Grp.*, 974 F.2d at 460 (citing *Hener*, 525 F. Supp. at 356).

61. *Id.*; Mark A. Wilder, *Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries*, 67 DEF. COUNS. J. 92, 94 (Jan. 2000) (“As a general principle, an admiralty court will favor salvage law over the law of finds because salvage law is more supportive of public

admiralty courts are strict in their application of the doctrine, limiting it to two situations: "(1) where the owners have expressly and publicly abandoned their property; and (2) where items are recovered from an ancient shipwreck and no one comes forward to claim them." In practical terms, for treasure hunter, Tommy Thompson, this means that he could only be awarded title to his discovery if a court determined that all insurance companies who paid claims against losses from the 1857 shipwreck have abandoned their claims.

2. *The Law of Salvage*

In contrast to finds, where the emphasis is on title and possession, the purpose of the law of salvage is the preservation of property and just compensation.⁶² Assuring those who save sunken property of commensurate remuneration for their efforts encourages "persons to render prompt, voluntary, and effective service to ships at peril or in distress by assuring them compensation and reward for their salvage efforts."⁶³ Therefore, the law requires that three elements be proven in order for a party to receive a salvage award: the maritime property at issue must be in peril; the service rendered to save the property must be voluntary; and the efforts to save the property must have been at least partially successful.⁶⁴ In light of the marine peril requirement, it might seem odd that the law of salvage would apply to the recovery of ancient vessels sunk in international waters. Often, the vessel

policy issues of preservation of maritime property and return of distressed property to a use beneficial to society.").

62. *Hener*, 525 F. Supp. at 356.

63. *R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel*, 742 F. Supp. 2d 784, 793, 2010 AMC 1817 (E.D. Va. 2010) (quoting *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 962, 1999 AMC 1330 (4th Cir. 1999)); *The BLACKWALL*, 77 U.S. (10 Wall.) 1, 14, 2002 AMC 1808 (1869) ("Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a *quantum meruit*, or as a remuneration *pro opere et labore*, but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property. Public policy encourages the hardy and adventurous mariner to engage in these laborious and sometimes dangerous enterprises, and with a view to withdraw from him every temptation to embezzlement and dishonesty, the law allows him, in case he is successful, a liberal compensation." *Id.*); See *St. Paul Marine Trans. Corp. v. Cerro Sales Corp.*, 505 F. 2d 1115 (9th Cir. 1974) (for an in depth discussion of salvage law.).

64. *United States v. Ex-USS CABOT/DEDALO*, 297 F.3d 378, 381, 2002 AMC 1974 (5th Cir. 2002) ("The doctrine of salvage is settled. 'A successful salvage claim requires three proofs: (1) marine peril; (2) voluntary service rendered when not required as an existing duty or from a special contract; and (3) success in whole or in part, or contribution to the success of the operation.'") (citing *Nunley v. M/V DAUNTLESS COLOCOTRONIS*, 863 F. 2d 1190, 1200, 1993 AMC 1676 (5th Cir. 1989)).

has been lying at the bottom of the sea for hundreds of years. However, in historic wreck situations, the courts have embraced an expansive interpretation of the requirement, finding that “[m]arine peril includes more than the threat of storm, fire, or piracy to a vessel in navigation. . . . Even after discovery of the [sunken] vessel’s location [she] is still in peril of being lost through the actions of the elements.”⁶⁵

Therefore, unlike a finder, a salvor does not obtain ownership of the property saved. Rather, he is compensated for the costs he incurred in performing the salvage operation by a salvage award, secured by a lien against the vessel.⁶⁶ Grounded in general maritime law tenets that date back

65. *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 569 F.2d 330, 337 1978, AMC 1404 (5th Cir. 1978); *Platoro Ltd., Inc. v. Unidentified Remains of a Vessel*, 614 F.2d 1051, 1052, 1981 AMC 1097 (5th Cir. 1980) (finding marine peril where a Spanish vessel had sunk in 1554 and been resting on the bottom of the Gulf of Mexico for over 400 years); *Cobb Coin Co., Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 549 F. Supp. 540, 557, 1983 AMC 1018 (S.D. Fla. 1982) (finding that a Spanish treasure galleon which was likely part of the 1715 Spanish Plate Fleet “was still in peril of being lost through the actions of the elements or of pirates and was not being successfully salvaged when the plaintiff undertook its salvage operations, it was subject to a “marine peril” for the purposes of the plaintiff’s salvage claim.”).

In contrast to the traditional judicial interpretations of marine peril, proponents of the new cultural property approach, *see infra* notes 76-81 and accompanying text, contend that salvage recovery effort themselves create marine peril. “Exploration which involves disturbing the seabed as well as any subsequent salvage actually places the site in marine peril.” Ole Varrner, *The Case Against the “Salvage” of Cultural Heritage*, 30 J. MAR. L. & COM. 279, 281 (1999).

66. *Sea Hunters v. Unidentified, Wrecked & Abandoned Vessel*, 599 F. Supp. 2d 57, 58, 2009 AMC 555 (2009); One of the most unique principles of maritime law is the admiralty suit *in rem* which is brought to enforce a maritime lien. In such an action, the doctrine of personification comes into play, pursuant to which, a vessel is viewed as an individual litigant who may be sued in her own name. Douglas Lind, *Pragmatism and Anthropomorphism: Reconceiving the Doctrine of the Personality of the Ship*, 22 U.S.F. MAR. L. J. 39, 40 (2009–2010) (discussing how through the distinct “doctrine of vessel personification . . . vessels acquired the status of independent juridical persons, fictionally animate beings capable of contracting and committing offense, and by unique admiralty process subject to arrest, condemnation, and forfeiture for wrongdoing.”); *Madruza v. Superior Court of Cal.*, 346 U.S. 556, 560, 1954 AMC 405 (1954) (in a maritime *in rem* action, “a vessel or thing itself is treated as the offender and made the defendant by name or description in order to enforce a lien.”); The principle that the vessel herself is liable for debts incurred on her behalf or for injuries she may have caused is rooted in the maritime law of the early nineteenth century. *See, e.g., The John G. Stevens*, 170 U.S. 113, 122–23, 2005 AMC 2389 (1898) (“The offending ship is considered herself the wrongdoer, and as herself bound to make compensation for the wrong done.”); In 1902, Justice Brown waxed poet when he explained the birth and life of a vessel:

A ship is born when she is launched, and lives so long as her identity is preserved
In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction.

to ancient times, a salvage award is not viewed as monetary compensation for work performed. Rather, it is “a reward given for perilous services, voluntarily rendered.”⁶⁷ The amount of the award is determined by the court and is based upon a number of factors first set out by the U.S. Supreme Court in *The BLACKWALL* which include:

- (1) The labor expended by the salvors in rendering the salvage service;
- (2) The promptitude, skill, and energy displayed in rendering the service and saving the property;
- (3) The value of the property employed by the salvors in rendering the service and the danger to which such property was exposed;
- (4) The risk incurred by the salvors in securing the property from impending peril;
- (5) The value of the property saved; and
- (6) The degree of danger from which the property was rescued.⁶⁸

3. *International Treasure Salvage vs. Historic Preservation of Cultural Property*

Where a wreck is found in international waters, as will be the case with the SS CENTRAL AMERICA, there is another wrinkle to the law of salvage.

She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name.

Tucker v. Alexandroff, 183 U.S. 424, 438 (1902). See also Mathew E. Zekala, *Liability and Salvage: Titanic Jurisprudence in United States Federal Court*, 16 LEWIS & CLARK L. REV. 1075, 1090–93 (2012).

67. *The BLACKWALL*, 77 U.S. (10 Wall.) at 14. It is an axiom of the maritime laws of the United States that “[c]ompensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a *quantum meruit*, or as a remuneration *pro opera et labore*, but as a reward given for perilous services, voluntarily rendered.” *Id.* While similar in result to *quantum meruit*, the principle of *negotiorum gestio* was founded on the idea that it would be unfair to allow for the unjust enrichment of one party to the detriment of another. Charles S. Davant, *A High Stakes Game of Finders Keepers: A Glance at the World of Marine Salvage Law*, 31 TRIAL ADVOC. Q., no. 4, 2012, at 37; see also Chris Ryan, *Nothing Gold Can Stay? How Tommy Thompson Lost His Golden Ticket and Gained Decades of Legal Turmoil*, 21 OCEAN & COASTAL L.J. 161, 168 (2016).

68. *The BLACKWALL*, 77 U.S. (10 Wall.) at 13–14. In *The BLACKWALL*, the captain of the steam-tug GOLIATH saved a British cargo ship, the BLACKWALL, which was on fire. The GOLIATH transported two fire engines to the location of the vessel in peril and then, at great risk to his own vessel, attached a line to the burning ship while members of the crew of the GOLIATH and the San Francisco fire department put out the conflagration thereby saving the vessel. *Id.* at 8–10.

Over the past few decades, there has been a growing concern about the preservation of historical underwater artifacts discovered by treasure hunters.⁶⁹ Arguably, there is an inherent conflict between the goals of preserving underwater cultural heritage by careful and methodical excavation to preserve archaeological information and the law of finds and salvage which encourages a salvage company to take possession, as quickly as possible, of the most valuable of artifacts from the historic wreck.⁷⁰ To address these concerns, a movement for the development of a new area of property law, cultural property, has arisen. Cultural property would replace the laws of salvage and finds in treasure salvage situations. Specifically, cultural property law would oust these traditional approaches where the ownership of cultural properties such as “objects of artistic, archaeological, ethnological or historic interest” were at stake.⁷¹ There are two approaches to ownership under cultural property law. Cultural Internationalism views “cultural property as important to the world as a whole,” while Cultural Nationalism “regards cultural property as property important to a specific culture or nation.”⁷² Under the first approach, the emphasis is on the preservation of the object by whatever nation it is located in so that the treasure can be seen and appreciated.⁷³ Under the second, treasures should be returned to the country where they were created.⁷⁴ If current maritime law embraced a standard where the historical importance of sunken wrecks and their cargo ships was of greater importance than the monetary value of their scraps and treasures, the landscape of laws of salvage and finds, at least where applicable to historic wrecks, would be dramatically altered. The problem with implementing such a change in focus is that the cost of salvaging historic shipwrecks is so unduly expensive, that it is really only

69. See, e.g. Kevin Doran, *Adrift on the High Seas: The Application of Maritime Salvage Law to Historic Shipwrecks in International Waters*, 18 SW. J. INT'L L. 647, 659–62 (2012); D.K. Abbass, *A Marine Archaeologist Looks at Treasure Salvage*, 30 J. MAR. L. & COM. 261, 262 (1999) (“What non-archaeologists may see as overly fastidious, we see as a commitment to the public benefits of good science.”).

70. *Id.*

71. John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831 (1986).

72. M. June Harris, *Who Owns the Pot of Gold at the End of the Rainbow? A Review of the Impact of Cultural Property on Finders and Salvage Law*, 14 ARIZ. J. INT'L & COMP. L. 223, 226 (1997).

73. *Id.* at 236.

74. *Id.* at 237.

viable where funds from outside investors are obtained.⁷⁵ In addition to the lure of being part of an expedition to find sunken treasure, it is the potential for overwhelming financial reward that entices outside investors to fund the salvage operations. Arguably, greed is the true engine behind the salvaging of historic shipwrecks. This is what concerns and disturbs many archaeologists. Where the goal of the salvors is a monetary one, the result can be the salvaging of goods, but at the expense of the structural integrity of the subject of salvage. This includes not only the ship herself, which is often of historic merit, but the gold or other artifacts discovered. But without the potential for profit, the salvaging might never take place at all and there would be no possibility of historic preservation of artifacts and learning. A discussion of the merits of these two positions warrants a view of what is in the public's best interests. This requires a careful weighing of whether it is better to bring more gold and other forms of currency into the market, or whether it is better to save and study the culture, often lost over a hundred years ago. In reality, the goals of salvors and cultural preservationists actually coincide, for "the more that historic shipwrecks and their artifacts are damaged during salvage, the less salvors are likely to recover by way of salvage awards or selling artifacts."⁷⁶

One answer to relieving the tension between the goal of the treasure salvor and that of cultural preservationist may be provided by the admiralty courts. In addition to considering *The BLACKWALL* factors in determining the appropriate amount for a salvage award,⁷⁷ in situations where archeological treasures are being salvaged, some courts have also taken into consideration "the protection of the archeological value of historic shipwrecks when calculating salvage awards."⁷⁸ To date, however, no court has actually added a consideration of "an archeological duty of care" or "the potential salvor's fidelity to archeological values" as an element to be considered in calculating a salvage award.⁷⁹ Adding such an element would seem to be in the best interest of the salvor, the preservationist, and the public good.

75. Christopher R. Bryant, *The Archaeological Duty of Care: The Legal, Professional, and Cultural Struggle over Salvaging Historical Shipwrecks*, 65 ALB. L. REV. 97, 106 (2001).

76. *Id.* at 117.

77. See *supra* notes 68–69 and accompanying text.

78. Cathryn Henn, *The Trouble with Treasure: Historic shipwrecks Discovered in International Waters*, 19 U. MIAMI INT'L & COMP. L. REV. 141, 166 (2012).

79. *Id.*

4. *Invoking Admiralty Jurisdiction Over Historic Wrecks in International Waters*

Before a federal district court can even begin to make the determination as to whether the applicable law in a case should be the law of salvage or that of finds, it must first have proper *in rem* jurisdiction over the vessel.⁸⁰ Even more important from the perspective of the treasure hunter is that once he believes he has located the wreck he seeks, he can bring an action *in rem* against the vessel, alleging in the alternative that under the law of finds, he is the “finder” or that under salvage law, he is the salvor of the wreck.⁸¹ The plaintiff may then seek a preliminary injunction enjoining any other would be salvors from interfering with his recovery efforts. Consequently, at the point in time where he was on the brink of discovering the location of the SS CENTRAL AMERICA, the most important legal question Thompson faced was how, after he located the SS CENTRAL AMERICA, he could bring her within the *in rem* admiralty jurisdiction of a federal district court. To succeed, the federal district court would have to rely on two unique fictions of maritime law.

a. **Constructive Possession**

In an admiralty *in rem* action, it is generally a prerequisite to a court’s jurisdiction that the vessel be “within the territorial confines of the court”

80. Admiralty proceedings *in rem* against vessel fall solely within the purview of the federal courts. *The MOSES TAYLOR*, 71 U.S. (4 Wall) 411 (1867). This exclusive jurisdiction was set out in The Judiciary Act of 1789 § 9 which provided that:

[The federal] district courts. . . shall. . . have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy where the common law is competent to give it.

The modern version of this provision, now found at 28 U.S.C. §1331, provides:

The district courts shall have original jurisdiction, exclusive of the Courts of the States, of [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

While the traditional route is for a plaintiff to bring a salvage claim by a proceeding *in rem* which names the vessel as the defendant, the plaintiff does have the option of proceeding *in personam* against the owner of the salvaged property. See Marc E. Montgomery, *Navigating the Back Channels of Salvage Law: Procedural Options for the Small Boat Salvor*, 83 TUL. L. REV. 1463 (2009) (for an excellent discussion of the *in personam* option).

81. *Columbus-Am. Discovery Grp., Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 742 F. Supp. 1327, 1331, 1990 AMC 2409 (E.D. Va. 1990).

and subject to the court's jurisdiction.⁸² Where the jurisdiction of an American federal court is being invoked, the ship must be within the court's district.⁸³ The jurisdiction of a district court is generally limited to the geographical limits of the district, including the territorial waters bordering the district (a distance of approximately 3 miles offshore and approximately 9 miles on the Gulf coast of Florida and Texas).⁸⁴ Obviously, there are circumstances where it would be impractical, if not impossible, to bring the historic wreck to the courthouse. In such instances, rather than actual possession, the court's custody of the property may be constructive.⁸⁵ "Constructive possession connotes something less than physical seizure."⁸⁶ For example, the United States Supreme Court upheld a district court's exercise of *in rem* jurisdiction where the salvor presented the court with "china, a full bottle of champagne, and a brass spike from the ship's hull."⁸⁷ Such "constructive" possession relies upon an assumption or legal fiction that a ship and cargo are one.⁸⁸ Consequently, where the court has possession of some artifact from the vessel, it has constructive possession of the entire ship.⁸⁹

82. *Id.* (citations omitted); There is no question that a court has the "power to declare title to those objects within its territorial jurisdiction.", *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 569 F.2d 330, 333 1978 AMC 1404 (5th Cir. 1978).

83. Paul V. Niemeyer, *Applying Jus Gentium to the Salvage of the R.M.S. TITANIC in International Waters - The Nicholas J. Healy Lecture*, 36 J. MAR. L. & COM. 431, 435 (2005).

84. "Admiralty and maritime jurisdiction is part of the judicial power conferred upon the courts of the United States by the Constitution which provides "[t]he judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction" (Article III, Section 2). Subject to specific statutes, the authority of a district court is generally limited to the geographical limits of the district, including the territorial waters bordering the district (a distance of approximately 3 miles offshore Band approximately 9 miles on the Gulf coast of Florida and Texas). However, bodies of water that are wholly located within a single state and are not navigable nor used in interstate or foreign commerce would not be included in the admiralty jurisdiction. In short, admiralty *in rem* jurisdiction of the federal court and the USMS authority to arrest vessels is limited to vessels and/or cargo physically within the territorial jurisdictional authority of the district." *Service of Process*, U.S. MARSHALL'S SERVICE, <http://www.usmarshals.gov/process/admiralty.htm> (last visited May 3, 2017).

85. *Id.*

86. *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 962, 1999 AMC 1330 (4th Cir. 1999).

87. *Id.* at 964 (citing *California v. Deep Sea Research, Inc.*, 523 U.S. 491, 496, 1998 AMC 1521 (1998)).

88. *Id.*

89. *Deep Sea Research*, 523 U.S. at 506-08.

**b. The Next Step in the Evolution of Admiralty Jurisdiction:
Constructive *In Rem* Jurisdiction**

While constructive possession had been embraced by the federal district courts as part of maritime law prior to the discovery of the SS CENTRAL AMERICA, the concept had only been applied where “the defendant ship or shipwreck” was within “the court’s territorial possession.”⁹⁰ Therefore, *in rem* jurisdiction could not be exercised by a court “so as to vest rights in property outside of [the court’s] territory, such as a shipwreck lying in international waters.”⁹¹ The sovereign powers of “a modern nation-state are defined by the territorial boundaries within which it exercises supreme and exclusive power.”⁹² Where the boundaries of a nation “are contiguous to oceans and seas, international law extends the nation’s sovereign limits twelve nautical miles beyond its shoreline.”⁹³ Beyond the waters within the twelve-mile limit, constitute international waters, also referred to as the high seas, “over which no nation can exercise sovereignty.”⁹⁴ Clearly this presents a problem when the shipwreck is located beyond the twelve-mile limit of territorial waters over which a court may properly exercise jurisdiction. Such was the dilemma facing Tommy Thompson where the SS CENTRAL AMERICA was lying approximately 160 miles off of the coast of South Carolina, clearly well within international waters.⁹⁵ In order for Thompson to have a legal claim to recover at the site of the wreck, he had to persuade the federal district court judge that it was appropriate to extend traditional admiralty jurisdiction beyond the twelve-mile limit in cases concerning historic wrecks located in international waters. Thompson prevailed, and the court elected to employ what is known as constructive *in rem* jurisdiction.⁹⁶ The courts have described constructive *in rem* jurisdiction as “imperfect” or “inchoate” *in rem* jurisdiction, which “falls

90. See Niemeyer, *supra* note 83, at 435.

91. *R.M.S. Titanic*, 171 F.3d at 964.

92. See Niemeyer, *supra* note 83, at 434.

93. *Id.* It should be noted, “the United Nation’s Law of the Sea treaty, has defined a national economic zone extending 200 nautical miles from the nation’s shoreline.” *Id.*

94. *Id.* (citations omitted).

95. Karla Zabłudovsky, *Shipwreck of the SS Central America Yields More Gold*, NEWSWEEK (Aug. 30, 2014 2:20 PM), <http://www.newsweek.com/shipwreck-ss-central-america-yields-more-gold-267637>.

96. See Doran, *supra* note 69, at 651.

short of giving the court sovereignty over the wreck.”⁹⁷ Rather, sovereignty on the high seas is shared by all nations and “no nation has exclusive power over property located beyond its territorial limits.”⁹⁸

The theory of constructive *in rem* jurisdiction is bolstered by the fact that the law the federal admiralty court will be applying is not unique to the United States. Rather, the law of salvage is part of maritime *jus gentium* or “the law of nations.”⁹⁹ As the United States Supreme Court observed in *Lauritzen v. Larsen*:¹⁰⁰

[Admiralty] courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.¹⁰¹

The essential reasoning supporting the theory of constructive *in rem* jurisdiction is that if the district court lacked the authority to exercise jurisdiction over shipwrecks in international waters, a void would be created which would result in the courts “abdicating the order created by the *jus gentium*” and “return[ing] the high seas to a state of lawlessness never experienced—at least as far as history reveals.”¹⁰² Ultimately, the courts have concluded that even though the federal admiralty court may be deciding the rights regarding a vessel in international waters, “[t]here seems to be no good reason why the question of salvage which is a question of the *jus gentium* . . . should not be decided by the courts of admiralty of any civilized nation.”¹⁰³

The import of all the legal theories and concepts for treasure salvors, such as Tommy Thompson, is that a United States federal district court has

97. *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 967, 1999 AMC 1330 (4th Cir. 1999).

98. See Niemeyer, *supra* note 83, at 436.

99. *R.M.S. Titanic*, 171 F.3d at 960.

100. 345 U.S. 571 (1953).

101. *Id.* at 581–82. See also, Craig Forrest, *Historic Wreck Salvage: An International Perspective*, 33 TUL. MAR. L. J. 347, 355 (2009). For a discussion of the problems associated with allowing American courts to regulate historic wrecks in international waters, see Doran, *supra* note 69, at 651.

102. *R.M.S. Titanic*, 171 F.3d at 969.

103. *Mason v. The SHIP BLAIREAU*, 6 U.S. (2 Cranch) 240, 249 (1804); see Sean D. Murphy, *Law of the Sea and International Waterways: Jurisdiction Over Salvage Claims Outside U.S. Territory: RMS TITANIC*, 94 AM. J. INT’L L. 125 (2000).

the power to determine the rights to a vessel outside its normal jurisdiction where the plaintiff is able to bring an artifact from the vessel into the geographical boundaries of the court.¹⁰⁴ A federal Marshall will then “arrest” the artifact, which is standing in the place of the vessel, and the court may assume jurisdiction.

The key for the salvor to unlock the door to jurisdiction is the recovery of an item or artifact from the sunken vessel in question. Specifically, for Thompson, only the recovery of at least one artifact from the SS CENTRAL AMERICA would permit him to seek a federal district court ordered injunction giving him the sole right as the salvor-in-possession to salvage the as yet unrecovered artifacts and cargo from the wreck.¹⁰⁵ Tommy Thompson needed an artifact and an artifact is what he found. On October 1, 1988, Thompson and his company finally found the shipwreck. Searching almost 200 miles off the coast of South Carolina, at a depth of around 8000 feet, Thompson’s ROV, the NEMO, searched thousands of potential targets on the sea floor’s debris field before eventually signaling that its sonar had picked up an object—the bell of the SS CENTRAL AMERICA.¹⁰⁶ Now able to invoke the federal district court’s admiralty jurisdiction,¹⁰⁷ Thompson brought an action *in rem* against the wreck and her cargo, claiming

104. *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 569 F.2d 330, 334–36, 1978, AMC 1404 (5th Cir. 1978). See Henn, *supra* note 78, at 160 (“Under *constructive in rem* jurisdiction . . . [i]t is presumed the “re” is legally, an indivisible whole, and thus the doctrine allows for part of the ship to satisfy jurisdictional requirements for the entire shipwreck.”).

105. Salvor-in-possession is a moniker used by the courts to describe on-going operations by a salvor which the court wants to legally protect while at the same time litigation is still going forward on the issue of whether the law of salvage or the law of finds should be applied in the instant case. *Sea Hunters, L.P. v. Unidentified, Wrecked & Abandoned Vessel*, 599 F. Supp.2d 57, 58, 2009 AMC 555 (D. Maine 2009) (“[T]he law of salvage would not entitle Plaintiff to be awarded ‘exclusive title’ to the vessel. . . . Rather, Plaintiff could be granted ‘the status of exclusive salvor in possession over property that has yet to be recovered’ and be awarded a lien to compensate them for the incurred costs of salvage operation.”) (citing *R.M.S. Titanic Inc. v. Wrecked & Abandoned Vessel*, 435 F.3d 521, 531, 2006 AMC 305 (4th Cir. 2006)).

106. Ellsworth Boyd, *SS CENTRAL AMERICA: Ship of Gold Resurfaces*, NUMA (Jan 2. 2015), <http://www.numa.net/2015/01/ss-central-america-ship-of-gold-resurfaces/>.

107. Cases involving the Law of Finds or that of Salvage have traditionally found their way into American courts via Article III, Section 2 of the United States Constitution, which establishes admiralty and maritime jurisdiction. See Davant, *supra* note 67, at 36. Pursuant to “Federal Rule of Civil Procedure 9(h) a pleader may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.” *Id.*

ownership under the law of finds or, alternatively, compensation via an award pursuant to the law of salvage.¹⁰⁸

D. *The Conquering Hero*

By the age of thirty-one, Tommy Thompson had persuaded 161 investors to fund an underwater expedition to recover the treasure of the sunken SS CENTRAL AMERICA. Opinions differ as to what constituted Thompson's charisma. Some characterize him having "a certain dorkish charm."¹⁰⁹ Investors have described his persuasiveness during his proposals. They "would start to listen to Thompson's proposals and explanations, sure that he was some kind of charming but impractical oddball, and then slowly become convinced that his ideas were sound, his plans rock-solid, and his enterprise an irresistibly exciting one."¹¹⁰ One thing is clear, Thompson was known for his brilliance and his preparation.¹¹¹ It is likely that this brilliance, coupled with a sort of energetic, sometimes almost manic, charisma, that convinced drew investors to his vision.

After the discovery of the wreck in 1988 by Thompson and his company, Thompson's crew excavated about 5 percent of the sunken gold. In early 1989, a victorious Thompson sailed into the harbor at Norfolk, Virginia as a conquering hero with a vessel loaded with thousands of pounds of gold that had sat undisturbed at the bottom of the Atlantic Ocean for 131 years. Almost reminiscent of a Roman Triumph,¹¹² the waterfront was lined

108. Lawrence D. Bradley, Jr., *U.S. Treasure Trove Law*, 17 GPSOLO, no. 6, 2000, http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/sep2000bradley.html.

After Columbus-America Discovery Group located the wreck of the Central America 160 miles off the coast of South Carolina, it filed in the district court an *in rem* action against the wreck and cargo, claiming it under the Law of Finds and alternatively under the Law of Salvage. To establish the court's jurisdiction, Columbus-America brought into court several artifacts and pieces of coal from the ship. Although jurisdiction did not extend beyond the three-mile limit, the court, on the basis of the artifacts deposited with the marshal, granted salvage rights to Columbus-America and issued an injunction against all others.

109. Mark Tatge & Miriam Gottfried, *Ship of Fools*, FORBES (June 3, 2006 9:00 AM), <http://www.forbes.com/forbes/2006/0619/158.html>.

110. Gary Kinder, *The Billion Dollar Boat*, OUTSIDE (May 2, 2004), <http://www.outsideonline.com/1928876/billion-dollar-boat>.

111. *Id.*

112. A Triumph was a grand procession granted to victorious Roman generals to celebrate a major military victory and to allow the public to jointly give praise and thanksgiving. The ritual was called a triumph because the victorious soldiers would cry "*io triumphe*" ("Hail, Triumphal

with reporter and TV cameras and hundreds cheering, his accomplishment as a marching band played “My Way”.¹¹³ Even the Fourth Circuit Court of Appeals praised Thompson, recognizing his achievement as “a paradigm of American initiative, ingenuity, and determination.”¹¹⁴

E. The Magnitude of the Discovery

The shipwreck site contains golden treasure in a multitude of forms: “coins, assay ingots, individual nuggets that miners pulled directly from the ground and streams, and—amazingly, gold dust strewn amid the sediment.”¹¹⁵

Estimated at containing between three and twenty-one tons of gold,¹¹⁶ Thompson’s crew salvaged more than \$40 million in gold coins and ingots.¹¹⁷ Thompson didn’t work alone. Between the years of 1985 to 1986, Thompson recruited 161 different people of varied diverse backgrounds to assist in the salvage of the sunken “Ship of Gold.”¹¹⁸ Most would contribute through a financial investment to Recovery Limited, a partnership that collected \$12.7 million in funds for the exhibition.¹¹⁹ It took only a little over a year for the search to come to fruition—Thompson’s crew found the wrecked SS CENTRAL AMERICA in 1987, and the team of twenty-two men began to raise the loot from the briny depths.¹²⁰ Located almost 200 miles from shore and at a depth of around 8000 feet, the NEMO searched thousands of potential targets on the sea floor’s debris field before eventually

Procession or “Hurrah O Triumph”) as they marched through the city streets. *Roman Triumph*, TRIBUNESANDTRIUMPHS, <http://www.tribunesandtriumphs.org/roman-life/roman-triumph.htm> (last visited May 4, 2017).

113. AP, *Feds chase treasure hunter turned fugitive*, USA TODAY (Sept. 13, 2014 11:54 AM), <https://www.usatoday.com/story/news/nation/2014/09/13/feds-chase-treasure-hunter-turned-fugitive/15578721/>.

114. *Columbus-Am. Discovery Grp. v. Atl. Mutual Ins. Co.*, 56 F.3d 556, 576, 1995 AMC 1985 (4th Cir. 1995).

115. *America’s Lost Treasure: The SS Central America, Nuggets & Dust*, SSCENTRALAMERICA, <http://www.sscentralamerica.com/nuggets.html>, (last visited May 4, 2017).

116. With gold trading at \$1320 an ounce in April of 2015, this salvage payday could be worth as much as \$887 million dollars. See *Gold Spot Price & Charts*, JM BULLION, <http://www.jmbullion.com/charts/gold-price/> (last visited Apr. 16, 2015).

117. Zabludovsky, *supra* note 95.

118. Herb Cook Jr., *Ship of debt*, COLUMBUS MONTHLY, (Feb. 6, 2014), <http://www.columbusmonthly.com/content/stories/2009/06/ship-of-debt.html>.

119. *Id.*

120. Boyd, *supra* note 106.

signaling that its sonar had picked up an object—the SS CENTRAL AMERICA’S bell.¹²¹

The investors were ecstatic to see Thompson’s triumphant return to Columbus in late 1989, as they anticipated a fantastic return on their investment. “In the early, heady days, estimates of the total value of Thompson’s find on the world’s gold-collecting markets ranged as high as \$500 million.”¹²² With such a high market estimate, investments of as little as \$50,000 could expect a possible return of around \$1.5 million.¹²³ A less modest \$250,000 contribution could expect to net around \$8 million.¹²⁴

F. The Intersection of “If it’s Too Good to be True, then it Probably Is” & The Labyrinth of the Law

“As American maritime law currently stands, whether the law of salvage or the law of finds applies to the recovery of a given ancient or historic shipwreck is essentially a crapshoot.”¹²⁵ Once again treasure hunter and gambler Tommy Thompson’s luck held when District Court Judge Richard Kellam declare that the bulk of the SS CENTRAL AMERICA’s gold belonged to Thompson’s crew, and not to the “self-styled finders from Ohio, British and American insurance underwriters, an heir to the Miller Brewing fortune, a Texas oil millionaire, an ivy league university, and an order of Catholic monks”, all of which claimed an interest in the “prize” which could be as high as “one billion dollars in gold.”¹²⁶ After finding that all “underwriters had previously abandoned their ownership interests in the gold by deliberately destroying certain documentation” and that the remainder of those intervening had failed to present any evidence that Thompson relied upon any of the information they provided in locating the wreck, the District Court for the Eastern District of Virginia determined that the applicable law was that of finds, not salvage, and awarded Thompson

121. *Id.*

122. Cook, Jr. *supra* note 118.

123. *See id.*

124. *See id.*

125. Jonathan Joseph Beren Segarra, *Cursing Under a Star-Dogged Moon: Why the Legal Regime Concerning the Recovery of Ancient or Historic Vessels Must Change*, 25 U.S.F. MAR. L. J. 93, 94 (2012–2013).

126. *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 974 F.2d 450, 454, 1992 AMC 2705 (4th Cir. 1992).

and his group title to “the golden treasure” in its entirety.¹²⁷ Not surprisingly, an appeal shortly followed. This time, Thompson’s luck did not completely hold.

Irrespective of the fact that the remains of the SS CENTRAL AMERICA’s had slept, undisturbed, deep beneath the ocean’s surface for well over 100 years, the Fourth Circuit Court of Appeals reversed the lower court, finding that there was insufficient evidence to support the lower court’s conclusion that the underwriters had “affirmatively abandoned their interests in the gold.”¹²⁸ Instead, the court of appeals directed the district court that on remand, it was “to apply the law of salvage and in doing so it must determine what percentage of the gold each underwriter insured.”¹²⁹ The lower court was also instructed to calculate the amount Columbus-America was entitled to receive as an award for its salvage efforts.¹³⁰ Once again Thompson’s luck held. On remand, the district court following the direction of the court of appeals, and considered not only the six *BLACKWALL* factors traditionally applied in determining a salvage award,¹³¹ but a seventh factor: the degree to which the salvors have worked to protect the historical and archaeological value of the wreck and items salvaged.¹³² Ultimately, the district court awarded Thompson and the Columbus-America Discovery Group “exclusive salvage rights and a

127. *Id.* (citing *Columbus-Am. Discovery Grp., Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 742 F. Supp. 1327, 1990 AMC 2409 (E.D. Va. 1990)).

128. *Id.* at 455.

129. *Id.* at 468.

130. *Id.* The Fourth Circuit also found that the district court had abused its discretion when it denied Columbia, John, and Grimm, all intervenors of right, any pre-trial discovery. *Id.* at 469–70. On remand, it directed the lower to permit discovery and conduct a new trial. *Id.* at 470. It also instructed that if it was found that Columbus-America had relied upon information provided by the intervenor in order to discover the SS CENTRAL AMERICA, the intervenor would be entitled to a salvage award. *Id.* In a very spirited dissent, Judge Widener declared that his colleagues had reversed the trier of fact simply because they would have decided the case differently. *Id.* at 471 (Widener, J., dissenting). Judge Widener thought the court should have given more deference to the finding of abandonment, since the wreck had been left alone for more than a century and the claimants had not taken an active part in the search for the vessel. *Id.* Indeed, many of the claimants were corporations that had not come into existence until long after the 1857 disaster. *Id.*

131. *The BLACKWALL*, 77 U.S. (10 Wall.) at 13–14, 2002 AMC 1808 (1869).

132. *Columbus-Am. Discovery Grp.*, 974 F.2d at 468. *See MDM Salvage, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 631 F. Supp. 308, 310, 1987 AMC 537 (S.D. Fla 1986) (holding that efforts taken “to preserve the archeological integrity” of a wreck site is a factor to be considered particularly “when exclusive salvage rights are sought”).

salvage award of ninety percent of the recovered gold, with the remaining value going to various underwriters of the vessel.”¹³³

As is often the case, a victory in the courts does not signal that it is time for a “and they all lived happily ever after” ending. Rather, for Tommy Thompson, it was the cause of accruing massive debt resulting in the shut-down of the salvage operations to recover more gold, and the harbinger of lost friendships with some of his investors, and a costly and contentious divorce.¹³⁴ Unfortunately, that was only the tip of the proverbial iceberg.

In 2000, Thompson did finally sell a portion of the salvaged gold to California Gold Group to the tune of \$52 million dollars.¹³⁵ Instead of their ship finally coming in, Thompson’s investors did not realize a dime. Those involved in Thompson’s quest for gold initially knew that the venture was risky and that gold might never be found.¹³⁶ Once a portion of treasure had been recovered, their faith in Thompson did not waiver. They faithfully waited patiently for years “while the treasure was frozen in the courts” as the parties argued the question of whether finds or salvage law governed the discovery.¹³⁷ They continued to be patient even while Thompson took his time in negotiating the sale of the recovered gold.¹³⁸ What ultimately cause their patience to evaporate was Thompson’s failure to communicate.

According to John F. Wolf, a major investor and Chairman of the Dispatch Printing Company, which publishes the Columbia Dispatch and Columbus Monthly, “it had always been tough to get answers from Thompson.”¹³⁹ While acknowledging that Thompson “was a bright guy . . . who did the research, found the ship and was right about the fact it had gold on it,” Wolf described Thompson’s “corporate life” as “beyond belief.”¹⁴⁰ Instead of fulfilling his fiduciary responsibilities, Thompson “reported to nobody” and “made deals, sold the gold, without ever telling the

133. *Columbus-Am. Discovery Grp. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 34 F. Supp. 3d 595, 598, 2014 AMC 2383 (E.D. Va 2014).

134. Cook, Jr., *supra* note 118.

135. Kathy Lynn Gray, *Even recovered, ship’s gold remains mystery*, COLUMBUS DISPATCH, (May 29, 2011 at 12:01 AM) <http://www.dispatch.com/content/stories/local/2011/05/29/even-recovered-ships-gold-remains-mystery.html>.

136. Sullivan, *supra* note 12, at 60.

137. *Id.*

138. *Id.*

139. Sullivan, *supra* note 12, at 60.

140. *Id.*

investors.”¹⁴¹ Finally, out of patience, in 2005, after attempts to obtain information from Thompson about the group’s finances and operations proved futile due to Thompson’s continuing need for secrecy, Wolf and another investor, Don Fanta, filed two lawsuits alleging breach of contract and fiduciary duty.¹⁴² Brought in Court of Common Pleas for Franklin County, the first suit was against Thompson and his companies; the second against his companies’ four directors.¹⁴³ Then, in 2006, nine members of Thompson’s salvage crew brought suit against him, claiming they are entitled to a share of the treasure as compensation for their work in the recovery effort.¹⁴⁴ Due to similarities between the three lawsuits, the cases were consolidated into one and in April 2006, the defendants removed the case to the U.S. District Court for the Southern District of Ohio.¹⁴⁵ Since then, “the mammoth case has grown increasingly complex, generating nearly 1,000 docket entries and exposing lies, inconsistencies and even more mystery along the way.”¹⁴⁶

It is important to recall that Thompson is not an attorney. He is an engineer with an amazingly creative mind. Arguably, in his mind, the machinations of the lawyers representing him were not simply inappropriate trial tactics. Perhaps he was simply worn down by the seemingly never-ending game of legal cat-and-mouse. This belief is borne out by Thompson’s responses and actions as the litigation progressed. He became “virtually unreachable” and rarely appear in court. “Eventually, Thompson stopped responding at all.”¹⁴⁷ Understandably, Judge Sargus did not respond well to Thompson’s withdrawal. After a number of futile attempts to reach him, the judge ordered Thompson to appear in court “to account for the missing inventories” and warned that a failure to do so would result in a warrant being issued for his arrest.¹⁴⁸ Thompson failed to take heed of the warning. On

141. *Id.*

142. *Id.* at 64. The suits were brought by Wolf, whose “Dispatch Printing Company had invested a total of \$1 million” and Don Fanta who had “invested \$250,000 in Thompson’s project....” *Id.* at 60.

143. *Id.* The Dispatch Printing Company, owned by Wolf and investor Donald C. Fanta “sue[d] the four directors of Columbus Exploration, the company that replaced Recovery Limited in salvage efforts to recover the Central America treasure.” Gray, *supra* note 135.

144. Sullivan, *supra* note 12, at 64.

145. *Williamson v. Recovery Ltd. P’ship*, 731 F.3d 608, 616, 2014 AMC 330 (6th Cir. 2013).

146. Sullivan, *supra* note 12, at 60.

147. Sullivan, *supra* note 12, at 63.

148. *Id.*

August 12, 2013, the reclusive treasure hunter's luck continued to dwindle when the court responded to his failure to appear by holding him in contempt and ordering U.S. Marshalls to track Thompson down.¹⁴⁹ Thompson was once again in the spotlight. This time, however, it was not as a conquering hero, but as a federal fugitive. When questioned as to why His client failed to appear, Thompson's attorney replied that Thompson was "out to sea" and hadn't been aware of the hearing.¹⁵⁰ In the response to the warrant for his arrest, Thompson simply disappeared, and he did so quite successfully. For almost three years, he and his assistant/girlfriend, Alison Antekeier, basically vanished from sight. Then, in 2015, the gambler's luck finally ran out.

On January 27, 2015, Thompson and Antekeier were tracked to the Hilton hotel in West Boca Raton.¹⁵¹ For almost a year, Thompson and Antekeier had been living at the Hilton, registered under fake names, and paying their hotel bill in cash.¹⁵² According to Peter Tobin of the U.S. Marshall Service, "Thompson was one of the most intelligent fugitives ever sought by the U.S. Marshals and he had vast financial resources at his disposal"¹⁵³ It seemed the couple had studied a book called "How to Be Invisible" in order to "evade law enforcement."¹⁵⁴ After the arrest, a search of Thompson's Vero Beach mansion turned up disposable cell phones and the book with a marked page providing advice on how to "[l]ive your life on a cash-only basis."¹⁵⁵ The Marshalls say they followed her for seven hours, she used a taxi, a transit bus, and walked almost a mile through the

149. *Id.*

150. Kathy Lynn Gray, *Federal Judge orders arrest of gold salvager who failed to appear in court*, COLUMBUS DISPATCH (Aug. 13, 2012 12:01 AM), <http://www.dispatch.com/content/stories/local/2012/08/13/judge-orders-gold-salvager-arrest.html>.

151. Gillian Mohny, *Fugitive Treasure Hunter Arrested by US Marshals Following Two-Year Search*, ABC NEWS (Jan. 28, 2015, 3:32 PM), <http://abcnews.go.com/US/fugitive-treasure-hunter-arrested-us-marshals-year-search/story?id=28553097>.

152. *Id.*

153. *Id.*

154. *Id.*

155. Associated Press, *Fugitive treasure hunter caught after years in hiding*, N.Y. POST (Jan. 28, 2015 12:05 PM), <http://nypost.com/2015/01/28/fugitive-treasure-hunter-arrested-after-2-years-on-the-run/>.

Boca Raton area.¹⁵⁶ She “knew exactly what she was doing.”¹⁵⁷ The night of the arrest, the couple did not resist and admitted to knowing to being under investigation.¹⁵⁸

Despite Thompson’s efforts to fight extradition by claiming that cold climates would exacerbate his allergies, he ultimately agreed to be returned to Columbus to face criminal contempt charges in federal court for failing to appear as previously ordered by Judge Sargus.¹⁵⁹ He waived an extradition hearing—essentially admitting he was the Tommy Thompson that U.S. Marshalls have been hunting for more than two years—in a federal courtroom in West Palm Beach, Florida.¹⁶⁰ On March 11, 2015, Thompson and Antekeier were returned to Columbus. After avoiding the federal court order that he appear to answer questions about the shipwreck gold he’d found for more than two years, Thompson finally appeared in chains and an orange prisoner’s jumpsuit. At 62 years of age, the man with the Midas touch pleaded guilty to criminal contempt of court.¹⁶¹

G. Show Me the Money or the Multi-Million Dollar Question

In the aftermath of Thompson’s arrest, only a small amount of the money Thompson allegedly had stolen was recovered. At the time they were arrested, Thompson and Antekeier only possessed \$425,380 in cash.¹⁶² In addition, at Thompson’s multi-million dollar home in Vero Beach, federal agents found a “bank statement bearing one of Thompson’s pseudonyms”

156. Erin Entin, *Tommy Thompson: Fugitive Treasure Hunter Arrested by U.S. Marshals in West Boca Raton*, ABC NEWS (Jan. 28, 2015, 5:48 AM), <http://www.abccactionnews.com/news/tommy-thompson-fugitive-treasure-hunter-arrested-by-us-marshals-in-west-boca-raton-florida>.

157. *Id.*

158. Associated Press, *supra* note 155.

159. Kathy Lynn Gray, *Treasure Hunter Tommy Thompson agrees to return to Columbus*, COLUMBUS DISPATCH (Feb. 12, 2015), <http://www.dispatch.com/content/stories/local/2015/02/12/thompson-agrees-to-return-to-ohio.html>.

160. Associated Press, *Arrested Ohio Treasure Hunter Being Brought Back from Florida*, 10TV (Feb. 12, 2015), <http://www.10tv.com/article/arrested-ohio-treasure-hunter-being-brought-back-florida>.

161. Kathy Lynn Gray, *Treasure Hunter Tommy Thompson, girlfriend plead guilty to contempt charges*, COLUMBUS DISPATCH (Apr. 9, 2015), <http://www.dispatch.com/content/stories/local/2015/04/08/Thompson-pleads-guilty-to-contempt-charge.html> (“Antekeier, dressed in a similar jumpsuit and chains, also pleaded guilty to criminal contempt of court.” She was released pending sentencing.).

162. *Id.*

representing a million dollar bank account.¹⁶³ However, at the home, “discarded bank straps marked with a “\$10,000” designation were also discovered.¹⁶⁴ These are arguably “proof that more money may be hidden somewhere nearby.”¹⁶⁵ Then, at a deposition after her arrest, Antekeier admitted that Thompson had a courier take 500 gold coins minted from gold bars recovered in the late 1980s from the SS CENTRAL AMERICA salvage operation and deposit them in a trust account in Belize.¹⁶⁶ At Thompson’s direction, Antekeier had taken delivery of the coins and placed them in a safe deposit box at a bank located in a Jacksonville, Florida.¹⁶⁷ According to Antekeier, in 2010, Tommy had her move the coins to “a secure place in Fort Lauderdale, Florida.”¹⁶⁸ Then, several months later, she was instructed to pack them into four suitcases and turn them over to someone who was to transport the coins to Belize and deposit them on behalf of Thompson.¹⁶⁹

This leaves unanswered the answer to the all-important question: exactly where are the coins? That is what federal district court Judge Algenon L. Marbley wants to know and has wanted to know since October of 2015. As part of his plea deal, Thompson agreed “to answer questions in closed door sessions” about the location of the gold.¹⁷⁰ At the conclusion of the first hearing concerning the location of the gold conducted on October 19, 2015, “a federal prosecutor chastised Thompson . . . calling his answers evasive and concerning. . . .”¹⁷¹ Then a second deposition scheduled for October 26, 2015, had to be postponed when Thompson decided to replace

163. Abby Phillip, *How Treasure Hunter Tommy Thompson, “One of the Smartest Fugitives Ever,” Was Caught*, WASH. POST (Jan. 30, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/01/30/how-treasure-hunter-tommy-thompson-one-of-the-smartest-fugitives-ever-was-caught/>.

164. *Id.*

165. *Id.*

166. Kathy Lynn Gray, *Treasure hunter’s assistant says gold coins were taken to Belize*, COLUMBUS DISPATCH (May 2, 2015), <http://www.dispatch.com/content/stories/local/2015/05/01/tommy-thompson-gold-coins.html>.

167. *Id.*

168. *Id.*

169. *Id.*

170. Andrew Welsh-Huggins, *Investors demand answers from deep-sea treasure hunter*, US NEWS (Nov. 2, 2015 12:39 PM), <http://www.usnews.com/news/us/articles/2015/11/02/investors-demand-answers-from-deep-sea-treasure-hunter>.

171. *Id.*

his current attorney, Steve Nolder, with another attorney, Sam Shamansky.¹⁷² This decision came as a complete surprise to Nolder who learned he was off the case from a fellow attorney.¹⁷³ One of the attorneys for the plaintiffs opined that he had no problem with the judge granting a continuance until November 24, 2015.¹⁷⁴ In light of Thompson's evasive answers at the first deposition, "It would have been a waste of time to sit through another deposition with [Thompson] pleading the Fifth amendment . . . This is typical of Mr. Thompson and of this case. Delay, delay, delay."¹⁷⁵ Thompson's failure to cooperate finally resulted in a December 2015 order by federal district court Judge Algenon Marbley pursuant to which Thompson is to remain in jail until he answers questions about the location of the 500 gold coins salvaged from the *SS CENTRAL AMERICA*.¹⁷⁶ In addition, the court ordered that Thompson must pay a daily fine of \$1000 until he cooperates and answers questions about the location of the gold.¹⁷⁷

Thompson has repeatedly failed to assist the attorneys in the lawsuit as agreed to in his plea agreement. In doing so, Thompson has proffered varying excuses. For example, in December 2015, he asserted "that a medical condition" prevented him from "remembering where he hid 500 gold coins."¹⁷⁸ Specifically, Thompson argued that he suffered from a rare form of "chronic fatigue syndrome" which, in addition to causing "heart trouble, a stroke and brain damage" resulted in "short-term memory loss."¹⁷⁹ In response, the court noted that Thompson "exhibits tremendous recall about everything except the most critical question: 'Where's the loot?'" and accordingly, gave Thompson "an indefinite jail sentence."¹⁸⁰ Thompson's response was that the judge could give him a death sentence because he has

172. Earl Rinehart, *Tommy Thompson sentencing postponed for new attorney*, COLUMBUS DISPATCH (Oct. 26, 2015 8:44 PM), <http://www.dispatch.com/content/stories/local/2015/10/26/Tommy-Thompson-case-postponed.html>.

173. *Id.*

174. *Id.*

175. *Id.*

176. Encarnacion Pyle, *Tommy Thompson must stay in jail until he answers questions about gold*, COLUMBUS DISPATCH (Dec. 15, 2015 6:22 AM), <http://www.dispatch.com/content/stories/local/2015/12/15/1-gold-hunt.html>.

177. *Id.*

178. *Id.*

179. Pyle, *supra* note 176.

180. *Id.*

already told federal prosecutors and other parties to the case everything he knows.¹⁸¹

In July 2016, an exasperated Judge Marbley ordered that Thompson be evaluated by a psychologist and granted a request by Thompson's attorney for an additional evaluation by a psychiatrist to determine whether his failure to fulfill the terms of his plea agreement could be due to mental condition affecting his memory.¹⁸² However, at the September 9, 2016, hearing regarding the doctors' reports, the court found that "there's no evidence [Thompson's] inability, unwillingness or refusal to comply is the result of some mental defect."¹⁸³ Rather, Judge Marbley noted "We know that Mr. Thompson has a flair for deception."¹⁸⁴

Understandably, the judge had grown tired of the malingerer former treasure-hunter's excuses and concluded that Thompson's "selective amnesia . . . adds up to a lack of credibility."¹⁸⁵ As of November 9, 2016, Thompson's \$1000 a day fine for failing to answer his investor's questions about the location of the gold, was approximately \$363,000. As Judge Marbley commented, "By the time [Thompson] remembers where the coins are, the fine may cover the cost of the coins."¹⁸⁶ Marbley's response to a request by Thompson's attorney "for permission to have additional tests conducted on Thompson during the next 60 days," was a scathing, "[a]re we going to drag this out until we find some doctor who agrees with him?"

Clearly, the court is fed up with Thompson's excuses, feigned neurological problems, deception, and failure to cooperate. Consequently, it came as no surprise on November 7, 2016, when the court explicitly ruled that Thompson had been "faking memory problems and intentionally deceiving authorities about the location of the missing coins minted from

181. *Id.*

182. Kantele Franko, *Psychiatrist to examine jailed treasure hunter*, COLUMBUS DISPATCH (July 1, 2016 7:09 AM), <http://www.dispatch.com/content/stories/local/2016/07/01/psychiatrist-to-examine-jailed-treasure-hunter.html>.

183. Earl Rinehart, *Tommy Thompson still won't say where shipwreck gold can be found*, COLUMBUS DISPATCH (Sept. 9, 2016 8:14 PM), <http://www.dispatch.com/content/stories/local/2016/09/09/tommy-thompson-still-wont-say-where-shipwreck-gold-can-be-found.html>.

184. *Id.*

185. Pyle, *supra* note 176.

186. *Id.*

gold” salvaged from the SS CENTRAL AMERICA.¹⁸⁷ In his order, the judge included part of the results from the psychiatrist’s test, which found only “minor memory problems.”¹⁸⁸ According to the psychiatric evaluation, “Thompson routinely made references to things that demonstrated his retention of information from minutes or hours earlier, he remembered things from one day to the next, he called aspects of his various cases with great specificity, and he recalled information about his career and business adventures dating back decades.”¹⁸⁹

Two days later, the court gave Thompson and Todd Long, Thompson’s fourth attorney, “a month to review documents that might jog his memory as to the location of \$2.5 million in coins.”¹⁹⁰ In response to Long’s request for a document review period extending until after the first of the year, Judge Marbley curtly answered “No.”¹⁹¹ Thompson was provided a laptop in order to review the contents of a flash drive provided by one of the investors in the salvage venture, which contains “12,496 pages culled from 75 boxes of documents in the case.”¹⁹² After examining the information on the flash drive, Thompson and Long reviewed the remainder of the hard copy documents from the boxes. As Judge Marbley observed, at least it was “a more useful activity than just sitting in jail.”¹⁹³

Thompson, however, has continued to stonewall. Based upon the possibility that “the 500 coins minted from the gold bars recovered from the wreck of the SS CENTRAL AMERICA” have been “secreted” for his children in a trust account,¹⁹⁴ on February 15, 2017, the court gave

187. Andrew Welsh-Huggins, *Treasure hunter Tommy Thompson is faking memory problems about missing coins, judge rules*, COLUMBUS DISPATCH (Nov. 7, 2016 11:58 AM), <http://www.dispatch.com/content/stories/local/2016/11/07/1107-tommy-thompson-faking-memory-problems-judge.html>.

188. *Id.*

189. *Id.*

190. Earl Rinehart, *Judge orders Tommy Thompson to study flash drive for clues to missing gold*, COLUMBUS DISPATCH (Nov. 9, 2016 2:02 PM), <http://www.dispatch.com/content/stories/local/2016/11/09/Gold-ship-hearing.html>.

191. *Id.*

192. *Id.*

193. *Id.*

194. Rinehart, *supra* note 183. This belief stems from Thompson’s own statement that the coins were in Belize and his promise as part of his plea bargain to reveal their location. Later, of course, he has claimed to have forgotten to whom he gave the coins. *Ex-treasure hunter ordered to turn over gold hidden in Belize*, BREAKING BELIZE NEWS (Apr. 24, 2017 9:34 AM),

Thompson another chance to reveal the whereabouts of the gold by instructing prosecutors to draft an order which would allow Thompson to grant power of attorney to authorize the government to inspect a Belize-based trust.¹⁹⁵ This would permit the court appointed receiver in the case, Ira Kane, to probe the trust to see if it contains information about the location of the coins.¹⁹⁶ On April 21, 2017, Thompson's 493rd day of adopting a "mum's the word" attitude, Judge Marbley ordered him to cooperate and sign the power of attorney or face a third charge of contempt of court.¹⁹⁷ Only by doing so, can Thompson be free of the civil contempt charges which has "no maximum term."¹⁹⁸ It is reported that Judge Marbley has already told Thompson that as long as he is "'content to be the master of misdirection and deceit,' the court is 'content to let [him] sit.'"¹⁹⁹

<https://www.breakingbelizenews.com/2017/04/24/ex-treasure-hunter-ordered-turn-gold-hidden-belize/>.

195. Associated Press, *Judge Gives Ex-treasure Hunter Way to Provide Coin Details*, U.S. NEWS (Feb. 16, 2017 1:16 AM), <https://www.usnews.com/news/ohio/articles/2017-02-16/judge-gives-ex-treasure-hunter-way-to-provide-coin-details>.

196. Earl Rinehart, *Judge again asks Tommy Thompson for gold location*, COLUMBUS DISPATCH (Apr. 21, 2017 4:98 PM), <http://www.dispatch.com/news/20170421/judge-again-asks-tommy-thompson-for-gold-location>. It is interesting to note that, while Thompson is languishing in jail, the goal of recovering the remaining treasure from the SS CENTRAL AMERICA has continued. In March 2014, the receiver, Ira Kane, representing Recovery Limited Partnership ("RLP") and Columbus Exploration LLC, awarded Odyssey Marine Exploration "the exclusive contract" to continue to salvage the remaining treasure and archeological artifacts from the wreck of the SS CENTRAL AMERICA. *Court Approves Odyssey Marine Exploration Contract for Gold Cargo Recovery From SS Central America Shipwreck*, ODYSSEY MARINE EXPL. (Mar. 6, 2014), <http://ir.odysseymarine.com/releasedetail.cfm?ReleaseID=831011>. On August 31, 2016, the Chief Justice of the U.S. District Court for the Eastern District of Virginia, Rebecca Beach Smith, "granted RLP a salvage award of 100% of the fair market value of the items recovered from the 2014 excavation" which recovered and documented "over 15,500 gold and silver coins, 45 gold bars and hundreds of other artifacts from the SS CENTRAL AMERICA shipwreck site." *Federal Judge Announces Favorable Ruling in the Matter of the SS Central America and Recognizes the Contribution of Odyssey Marine Exploration*, GLOBE NEWSWIRE (Sept. 6, 2016), <http://www.tampabaynewswire.com/2016/09/06/federal-judge-announces-favorable-ruling-in-the-matter-of-the-ss-central-america-and-recognizes-the-contribution-of-odyssey-marine-exploration-48664>. While the actual value cannot be determined until the salvaged treasures are sold, the estimated value of the salvage award is \$48.2 million. Earl Rinehart, *Case drags on as defendant Tommy Thompson says he can't remember where the treasure is*, COLUMBUS DISPATCH (Dec. 26, 2016 11:15 AM), <http://www.dispatch.com/content/stories/local/2016/12/26/case-drags-on-as-defendant-says-he-cant-remember-where-the-treasure-is.html>.

197. Rinehart, *Case drags on as defendant Tommy Thompson says he can't remember where the treasure is*, *supra* note 183.

198. *Id.*

199. *Id.*

It appears that Tommy Thompson now has two choices: sign the power of attorney, which Thompson's reticence indicates is likely to reveal where he stashed the loot, or languish indefinitely in jail to the tune of \$1000 a day.²⁰⁰ Perhaps the former treasure-hunter, who turned sixty-five years old in April, does not care. Further, even if he were to escape confinement due to civil contempt, he is still threatened with the criminal contempt charge against him for failing to appear in court in August of 2013 which has yet to be imposed.²⁰¹ That charge could result in Thompson serving a two year prison term.²⁰² Then, after serving the two year prison stint, Thompson would still face another civil suit brought against him by the scientist who assisted him in locating the wreck.²⁰³ It is hard to imagine Thompson, who now appears in court in a wheelchair, waiting out his sentence and then flying off to live like a king in the exotic country where he stashed the gold which has no extradition treaty with the United States.²⁰⁴

Clearly, at this point, Tommy Thompson's days as a treasure hunter and conquering hero are long gone, never to return. Considering that the coins have an estimated value of \$2.5 million,²⁰⁵ if investors are correct, Thompson's purpose at this point in his life may be to leave a major legacy for his family.

IV. CONCLUSION

A. *Finders Keepers, Salvors Weepers?*

It has been hypothesized that what led to Thompson's downfall and the "legal firestorm unleashed by the discovery"²⁰⁶ of the SS CENTRAL AMERICA may have been the initial ruling by the federal district court that Thompson's discovery fell within the law of finds, not that of salvage. One of the investors in Thompson's salvage expedition, Don Garlikov, is of the

200. Associated Press, *Lawyer Is Released After Serving Over 14 Years on Civil Contempt Charge*, N.Y. TIMES (July 11, 2009), <http://www.nytimes.com/2009/07/12/us/12contempt.html> (recounting the case of H. Beatty Chadwick, a former Philadelphia-area lawyer, who was behind bars for close to 14 years on a civil contempt charge after refusing to turn over millions of dollars in a bitter divorce battle).

201. See *supra* notes 142–44 and accompanying text.

202. Rinehart, *supra* note 183.

203. *Id.*

204. *Id.*

205. Rinehart, *supra* note 183.

206. Sullivan, *supra* note 12, at 51.

opinion that if Thompson had only brought up three pounds of gold instead of three tons, the result would have been different.²⁰⁷ “He should have brought up three pounds. Because there’s an axiom out there for me: If they think they can steal it from you, they’ll try.”²⁰⁸ While a bit hyperbolic, it is arguable that if Thompson had waited to recover the majority of the treasure until after the dust had settled in admiralty court over who had salvage rights, there would have been less to lose.²⁰⁹ Things might have turned out differently for investors.

B. The Legacy of the Tale of Tommy Thompson

The saga of Tommy Thompson ends as it started, with a mystery. Perhaps he really didn’t take anything he was not entitled to; drawing only his salary and all other funds expended to cover the debt from litigation expenses. Perhaps it is simply the story of a man worn down and eventually destroyed by the greed of others and the countless allegations that he faced for many years in various courtrooms. Contrary to the view of some that he had absconded with millions and was now living lavishly in another country under a new name, Thompson basically became a recluse. Ultimately, perhaps he got what he most desired—becoming invisible after you have been a hero. Only Thompson knows what he dreams about each night while imprisoned in his cell.

In the end, perhaps the most telling description of Thompson’s plight can be attributed to his cousin, Ted Thompson, who shared with the reporters his view that if Tommy “had it to do all over again, he wouldn’t do it. You don’t throw away your life for something that’s yellow and weighs a lot.”²¹⁰ At this point, it is likely that Tommy would no doubt agree. What started as the key to a golden future has become the lock on his cell door. As one of Thompson’s friends aptly commented, “[t]he tragedy is that [Tommy’s] dream became his doom.”²¹¹ “Tommy used the word, what’s the word? . . . Plague of the gold.”²¹²

207. *Id.* at 63.

208. *Id.*

209. *Id.*

210. Entin, *supra* note 156.

211. Associated Press, *supra* note 9.

212. *Id.*